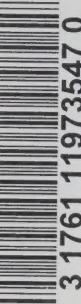


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SUBMISSION TO
HOUSE OF COMMONS LEGISLATIVE COMMITTEE
EXAMINING BILL C-52
"COASTING TRADE AND
COMMERCIAL MARINE ACTIVITIES ACT"

FEBRUARY, 1988

The Atlantic Provinces Transportation Commission is an advisory body to manufacturers, producers, business in general and trade groups, and it is financially supported by the Governments of Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador. Its mandate is to seek for shippers in this region of Canada the best possible transportation rates and services in order to permit the products of the Atlantic Provinces to compete in the marketplaces of Canada and throughout the world. Overall policy of the APTC is formulated by a Board of Directors made up of twenty-one prominent business and professional people including one member of the public service from each of the supporting governments. The APTC Directors are appointed in part by the supporting governments and in part by the Atlantic Provinces Chamber of Commerce, with which the APTC maintains an affiliation.

This submission is made on behalf of the APTC Board of Directors and is not intended to restrict in any way any individual, company or government from submitting different or opposing views.

Marine transport has played a major role in the movement of both the products of this region and inbound consumer goods and materials required by regional producers and has had a major influence upon the rates assessed such products. Indeed, water competition underlies the basic railway rate structure of the Atlantic Provinces and specific rates are published by the railways from time to time to meet particular water competitive situations.

For example, in his book "Canadian Railway Freight Pricing", W. G. Scott refers to water competition being reflected in the Maritime rate structure in these words:

"A class rate structure was established at an early date for inter-regional movements of rail freight between Ontario, Quebec and the Maritimes. These rates were published on a lower basis than those within either rate territory. Their origin is somewhat obscure but they reflected the economic and geographic features of the regions. The two territories were separated by long railway hauls and effective water competition,¹ via the St. Lawrence River was available."

In his book, "The Economics of Canadian Transportation", Prof. A. W. Currie refers to the effect of water competition on Maritime Provinces' rail rates in these words:

"Originally the arbitrariness were set by competition between the former Intercolonial and vessels plying between Montreal and Atlantic Ports."²

The British Commonwealth Shipping Agreement of 1931, which provided open access to the whole fleet of Commonwealth vessels, provided the Atlantic Provinces with a pool of vessels and a competitive rate level for many movements, such as, coal and steel of Cape Breton, salt, petroleum products, ores and minerals, etc.

As the British Commonwealth fleet declined, at least relative to other non-Canadian fleets, the ability to use Commonwealth vessels also declined. In 1983, through the Customs and

¹W. G. Scott, Canadian Railway Freight Pricing, Historical and Current Perspectives, 1836-1983, Canadian Institute of Guided Ground Transportation, 1985, p. 71.

²A. W. Currie, The Economics of Canadian Transportation, University of Toronto Press, 1954, p. 30.

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Excise Offshore Application Act, the federal government ended the long established practice of permitting Commonwealth vessels to operate between Canadian points free of license and duty. That Act applied a duty to Commonwealth vessels when used in Canadian trade and the practical implementation of it resulted in Commonwealth ships now requiring a waiver from the Canadian Transport Commission in order to qualify for temporary entry duty and avoid full duty payment.

By Bill C-52 and the Customs and Excise Offshore Application Act, competition in the transport of goods by marine carriers is being restricted. Canadian manufacturers and producers cannot draw upon the worldwide fleet of foreign ships except upon the issuance of a waiver and the payment of temporary entry duty. They are instead restricted to the limited fleet of Canadian built or Canadian registered and full duty paid vessels.

Such a policy is contrary to the philosophy underlying Canadian transportation policy. The national transportation policy statement in the National Transportation Act 1987 declares that,

". . . a safe, economic, efficient and adequate network of viable and effective transportation services making the best use of all available modes of transportation at the lowest total cost is essential to serve the transportation needs of shippers and travellers and to maintain the economic well-being and growth of Canada and its regions and that those objectives are most likely to be achieved when all carriers are able to compete, both within and among the various modes of transportation, under conditions ensuring that, having due regard to national policy and to legal and constitutional requirements, . . .
(b) competition and market forces are, whenever possible, the prime agents in providing viable and effective transportation services,"

"(c) economic regulation of carriers and modes of transportation occurs only in respect of those services and regions where regulation is necessary to serve the transportation needs of shippers and travellers and such regulation will not unfairly limit the ability of any carrier or mode of transportation to compete freely with any other carrier or mode of transportation.

(d) transportation is recognized as a key to regional economic development and commercial viability of transportation links is balanced with regional economic development objectives in order that the potential economic strengths of each region may be realized."

In modes of transport other than marine, competition is encouraged by government policy in order to provide Canadians with low cost and efficient transport services. Canadian railway and Canadian truckers are expected to compete with each other and with foreign carriers.

In the marine mode, government policy, as expressed in Bill C-52, protects Canadian shipping interests from foreign competition. Canadian manufacturers and producers must likewise have protection from the potential for unreasonable pricing by the protected marine industry and from the costs of duty on non-Canadian ships when permitted to operate in the coastal trade under waiver or, as it is referred to in Bill C-52, under license.

Sections 4 and 5 of Bill C-52 provides that, upon application by a Canadian resident, the Minister of National Revenue shall issue a license in respect of a non-Canadian ship when the Minister is satisfied that (a) no Canadian ship is suitable and available to perform the activities described in the application; and (b) the duty payable for temporary entry has been paid or arrangements made to pay such duty.

Section 8(2) of Bill C-52 provides that the Governor-in-Council may make regulations prescribing criteria to be applied in determining the suitability and availability of Canadian ships. Without these regulations being available indicating the factors that are to be considered in the granting of a license, Parliament is being asked to pass a Bill, and Canadian manufacturers and producers are being asked to accept a piece of legislation, which could give the Canadian shipowner the ability to assess monopoly level prices for the use of a Canadian ship.

If a license is only granted when no suitable Canadian ship is available, it means that a Canadian shipowner, knowing he has a ship, can demand of the manufacturer and producer a rate level which reflects a monopoly situation. The Canadian shipowner can do this because the manufacturer and producer cannot secure a waiver for a non-Canadian ship if the availability of a Canadian ship is the criteria for not granting a license. To avoid creating this situation, the regulations must require the Canadian Transport Commission to take into consideration the economic suitability of the vessel as well as its physical suitability and availability. The economic suitability of the vessel is so fundamental to the operation of the license system found in Bill C-52 that the legislation must clearly define "suitability" as including competitive freight rates.

Accordingly, the APTC urges this Committee to recommend an amendment to Bill C-52 to require the Canadian Transport Commission, in making a determination of the availability of a Canadian ship, to consider the competitive level of freight rates or charter hire of the Canadian vessel versus the non-Canadian vessel. To accomplish this, the APTC proposes the following amendment to Section 8:

"8.(1) In making a determination referred to in Section 7, the Commission shall apply the criteria, if any, prescribed by regulations made pursuant to Subsection (2) and the Commission shall apply such commercial, economic and technical criteria, including a competitive level of freight rates or charter hire, in connection with Canadian ships and non-duty paid ships as it deems appropriate to the extent that such criteria does not conflict with any criteria so prescribed." (Changes underlined)

At present, when a non-Canadian ship is operated in Canadian waters under a waiver, it is subject to duty under a temporary entry process. In other words, after having determined that there is no Canadian vessel suitable or available for the activity proposed, National Revenue assesses duty on the vessel. This means that the Canadian manufacturer or producer must pay that duty either directly or as part of the freight rate or charter cost. This duty payment is an added cost to the Canadian manufacturer making him less competitive with foreign sources for Canadian markets. In fact, there are cases where foreign sources have secured Canadian markets at the expense of Canadian producers due to the effect of this temporary entry duty. The temporary entry duty does nothing to protect the Canadian shipowner because it applies only after the granting of a waiver and only when no suitable Canadian vessel is available. It is akin to assessing duty on the importation of a manufactured product "of a class or kind not made in Canada".

The APTC's second point is that no duty whatsoever should be assessed on a foreign ship operating in Canada's coastal waters under a waiver or licence. Accordingly, the APTC proposes the following amendment to Bill C-52 to accomplish this objective.

Customs and Excise Offshore Application Act

25.1. Add Section 10.1 to the said Act as follows:

10.1. No duty or taxes are payable on a foreign ship or a non-duty paid Canadian ship, as defined in the Coasting Trade and Commercial Marine Activities Act, operating in Canadian waters or in waters above the Continental Shelf of Canada, within the meaning of the Customs Act, the Territorial Sea and Fishing Zones Act and the Customs and Excise Offshore Application Act, under a license issued pursuant to the Coasting Trade and Commercial Marine Activities Act.

The third point that the APTC wishes to make on Bill C-52 is that the determination of whether a license is to be granted must be made quickly. The shipping market is extremely volatile and a shipper often must accept an offer for a ship within a few hours. Consequently, the shipper cannot wait for days for the determination to be made. The APTC believes that there has been improvement in the time taken to handle applications for waivers. Nevertheless, to ensure that applications continue to be handled with the promptness required in the shipping market, the APTC would urge this Committee to note that need in its report on Bill C-52 as a principle to guide the Canadian Transport Commission in its duty under Section 7.

CONCLUSION

Canada's transportation policy rests upon competition. Manufacturers and producers require competition in the marine transport industry to produce competitive rates and services as competition does in the other modes of transport. Bill C-52 requires amendment to ensure that manufacturers and producers have competition in the marine transport industry. The APTC

urges this Committee to recommend to the House that Bill C-52 be amended to (a) require the Canadian Transport Commission, in making a determination of the availability of a Canadian ship, to take into consideration whether that ship is economically competitive for the service; and (b) that no duty be payable on a non-Canadian ship in the coasting trade when such ship is operated under a license issued pursuant to the Coasting Trade and Commercial Marine Activities Act.

Respectfully submitted,



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General Manager
Atlantic Provinces
Transportation Commission

Moncton, NB
February 3, 1988

